

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

PETER J. HELFRICH,

Plaintiff,

v.

DWIGHT NEVEN, *et al.*,

Defendants.

Case No. 2:14-cv-01725-RFB-NJK

ORDER

**I. Introduction**

On April 21, 2015, the Court set a hearing on several motions. ECF No. 93. This hearing was rescheduled to accommodate briefing of four newly filed motions. ECF No. 109. On May 26, the Court heard argument and ruled on twenty-three motions (the “Hearing”):

- Emergency Motion for Preliminary Injunction (ECF No. 4);
- Emergency Motion to Amend [4] Motion for Preliminary Injunction (ECF No. 14);
- Motion for Leave to File Supplement Exhibits (ECF No. 15);
- Motion for Leave to File Supplement re: [4] Emergency Motion for Preliminary Injunction (ECF No. 22);
- Motion for Preliminary Injunction (ECF No. 25);
- Motion for Temporary Restraining Order (ECF No. 26);
- Motion to Strike [26] Motion for Temporary Restraining Order, [25] Motion for Preliminary Injunction (ECF No. 30);
- Emergency Secondary Motion for Temporary Restraining Order (ECF No. 41);
- Emergency Secondary Motion for Preliminary Injunction (ECF No. 42);
- Motion for Leave to File Amended Complaint and Secondary TRO and Preliminary Injunction (ECF No. 43);
- Motion to Strike [45] Response to [38] Response to [30] Motion (ECF No. 47);
- Motion to Strike [42] Motion for Preliminary Injunction, [41] Motion for Temporary Restraining Order (ECF No. 51);
- Motion to Strike [51] Motion to Strike [42] Motion for Preliminary Injunction, [41] Motion for Temporary Restraining Order (ECF No. 58);
- Motion to Strike [51] MOTION to Strike [42] Motion for Preliminary Injunction, [41] Motion for Temporary Restraining Order (ECF No. 61);
- Motion to Amend/Correct (ECF No. 85);
- Emergency Motion for Preliminary Injunction (ECF No. 89);

- Motion for Temporary Restraining Order (ECF No. 90);
- Motion for Temporary Restraining Order (ECF No. 96);
- Motion for Preliminary Injunction (ECF No. 97);
- Motion for Preliminary Injunction (ECF No. 105);
- Motion for Temporary Restraining Order (ECF No. 106);
- Motion for Leave to File Supplement to Defendants' Partial Opposition to Helfrich's Motion for Leave to Amend Complaint (ECF No. 121); and
- Motion for Leave to File Supplement (ECF No. 133).

The Court ruled from the bench on all motions. This Order follows to summarize the Court's rulings.

## **II. Motions**

### **A. The First Motion for Injunctive Relief and Related Motions**

#### **1. Emergency Motion to Amend [4] Motion for Preliminary Injunction, ECF No. 14**

For the reasons stated on the record at the Hearing, the Court construes Helfrich's motion to amend his motion for preliminary injunction as a request to supplement his original motion, and the motion is granted insofar as it is a supplement to the original motion for preliminary injunction.

#### **2. Motion for Leave to File Supplement Exhibits, ECF No. 15**

For the reasons stated on the record at the Hearing, the Court denies, in part, Helfrich's motion to file supplemental exhibits. However, the Court also grants in part Helfrich's motion for leave to file insofar as these exhibits may be refiled with a future amended complaint.

#### **3. Motion for Leave to File Supplement re: [4] Emergency Motion for Preliminary Injunction, ECF No. 22**

For the reasons stated on the record at the Hearing, this motion is denied.

#### **4. Emergency Motion for Preliminary Injunction, ECF No. 4**

For the reasons stated on the record at the Hearing, this motion for preliminary injunction is denied without prejudice.

//

//

**B. Motions to Amend the Complaint and Related Motion**

**1. Motion for Leave to File Amended Complaint and Secondary TRO and Preliminary Injunction, ECF No. 43, and Motion to Amend/Correct, ECF No. 85**

For the reasons given on the record at the Hearing, the Court grants in part and denies in part Helfrich's motions to amend. The Court denies both of Helfrich's proposed amended complaints, ECF Nos. 43 and 85, but, because the Court thinks it appropriate to allow Helfrich the opportunity to amend, Helfrich will have until July 15, 2015 to file a final amended complaint. The Court will not screen the amended complaint, but Defendants will have thirty days from the filing of the amended complaint to file appropriate responsive motions. Should Helfrich fail to file a new amended complaint by July 15, 2015, the case will proceed under the October 29, 2014, Amended Complaint, ECF No. 9.

**2. Motion for Leave to File Supplement to Defendants' Partial Opposition to Plaintiff's Motion for Leave to Amend Complaint, ECF No. 121**

For the reasons stated on the record at the Hearing, Defendants' motion to supplement earlier briefing on the matter is denied as moot. Defendants may make their arguments, if appropriate, in response to Helfrich's final amended complaint.

**C. The Second, Third, Fourth, and Sixth Set of Motions for Injunctive Relief and Related Motions**

**1. Motion for Preliminary Injunction, ECF No. 25; Motion for Temporary Restraining Order, ECF No. 26; Emergency Secondary Motion for Temporary Restraining Order, ECF No. 41; Emergency Secondary Motion for Preliminary Injunction, ECF No. 42; Emergency Motion for Preliminary Injunction, ECF No. 89; Motion for Temporary Restraining Order, ECF No. 90; Motion for Preliminary Injunction, ECF No. 105; and Motion for Temporary Restraining Order, ECF No. 106**

For the reasons stated on the record at the Hearing, these motions for injunctive relief are denied.

//

//

1                                   **2. Motion to Strike [26] Motion for Temporary Restraining Order, [25]**  
 2                                   **Motion for Preliminary Injunction, ECF No. 30; Motion to Strike [45]**  
 3                                   **Response to [38] Response to [30] Motion, ECF No. 47; Motion to**  
 4                                   **Strike [42] Motion for Preliminary Injunction, [41] Motion for**  
 5                                   **Temporary Restraining Order, ECF No. 51; Motion to Strike [51]**  
 6                                   **Motion to Strike [42] Motion for Preliminary Injunction, [41] Motion**  
 7                                   **for Temporary Restraining Order, ECF No. 58; Motion to Strike [51]**  
 8                                   **Motion to Strike [42] Motion for Preliminary Injunction, [41] Motion**  
 9                                   **for Temporary Restraining Order, ECF No. 61; Motion for Leave to**  
 10                                   **File Supplement, ECF No.133**

11                                   For the reasons stated on the record at the Hearing, these motions, related to the denied  
 12                                   motions for injunctive relief, are themselves denied as moot.

#### 13                                   **D. The Fifth Set of Motions for Injunctive Relief**

##### 14                                   **1. Motion for Temporary Restraining Order, ECF No. 96**

15                                   For the reasons stated on the record at the Hearing, this motion is denied.

##### 16                                   **2. Motion for Preliminary Injunction, ECF No 97**

17                                   After careful consideration, the Court finds this motion is most appropriately construed as  
 18                                   a motion to compel. While the Court had initially at the hearing construed and ruled on this  
 19                                   motion as if it were a preliminary injunction motion, the Court finds this framework to be less  
 20                                   consistent with the motion and appropriate legal framework. For the reasons stated on the record  
 21                                   at the Hearing and elaborated herein, this motion to compel is granted in part and denied in part.

22                                   Helfrich has not received the sets of the Federal Rules of Civil Procedure and Nevada  
 23                                   Rules of Civil Procedure (the “Material”) that he ordered that were shipped to him from  
 24                                   Thompson Reuters. The Court finds that the Material was delivered to High Desert State Prison  
 25                                   (the “Prison”) but not subsequently delivered to Helfrich. The current disposition of the Material  
 26                                   is unclear; the Material is either still in the possession of the Prison or has been disposed of by  
 27                                   the Prison without discussion with—or the consent of—Helfrich. Presently, Helfrich is in  
 28                                   disciplinary segregation and does not have access to legal materials in the Prison’s law library.  
 Defense counsel indicated at the Hearing that she was uncertain when disciplinary segregation  
 would end; she estimated a month or so. In the instant case, discovery is ongoing and is  
 presently scheduled for 90 days, ending July 6, 2015.

1 Helfrich has a right to access legal materials, especially those which he purchased  
 2 himself, and is entitled to the Material. Helfrich made efforts to obtain the Material and was  
 3 thwarted by the Prison. Therefore the Court finds it appropriate for the Prison to replace the  
 4 Material, which the Prison either has in its possession or has disposed of.

5 Accordingly, Defendants are ordered to provide to Helfrich within thirty days an  
 6 annotated soft-copy of Federal Rule of Civil Procedure 26. Defendants may deliver the soft-  
 7 copy either all at once or alternatively on a regular basis in divisions of no fewer than 50 pages at  
 8 a time, such that by the end of thirty days Helfrich has had an opportunity to review Rule 26.

9 Defendants are further ordered to review Prison logs and, using the tracking number and  
 10 delivery information available, to determine whether and how the Books came into the Prison,  
 11 what happened to the Books, and the current disposition of the Books. If the Books are at the  
 12 Prison, the Books should be delivered to Helfrich. If not, re-delivery is to be arranged.  
 13 Defendants will report to Helfrich and file with the Court a supplement describing what has  
 14 happened to the Books, within thirty days.

15 This motion is denied as to all other issues raised.

### 16 **III. Conclusion**

17 **IT IS THEREFORE ORDERED** that

- 18 1. Emergency Motion for Preliminary Injunction, ECF No. 4, is **DENIED**  
 19 without prejudice.
- 20 2. Emergency Motion to Amend [4] Motion for Preliminary Injunction, ECF  
 21 No. 14, is construed as a motion to supplement and is **GRANTED**.
- 22 3. Motion for Leave to File Supplement Exhibits, ECF No. 15, is **DENIED**  
 23 **IN PART and GRANTED IN PART**. The supplemental exhibits are  
 24 presently improperly filed but may be refiled with an amended complaint.
- 25 4. Motion for Leave to File Supplement re: [4] Emergency Motion for  
 26 Preliminary Injunction, ECF No. 22, is **DENIED**.
- 27 5. Motion for Preliminary Injunction, ECF No. 25, is **DENIED**.
- 28 6. Motion for Temporary Restraining Order, ECF No. 26, is **DENIED**.

- 1                   7. Motion to Strike [26] MOTION for Temporary Restraining Order, [25]  
2                   Motion for Preliminary Injunction, ECF No. 30, is **DENIED as moot**.
- 3                   8. Emergency Secondary Motion for Temporary Restraining Order, ECF No.  
4                   41, is **DENIED**.
- 5                   9. Emergency Secondary Motion for Preliminary Injunction, ECF No. 42, is  
6                   **DENIED**.
- 7                   10. Motion for Leave to File Amended Complaint and Secondary TRO and  
8                   Preliminary Injunction, ECF No. 43, is **DENIED in part and GRANTED**  
9                   **in part**. Plaintiff shall have until July 15, 2015, to file an amended  
10                  complaint. Defendants will then have 30 days to file responses.
- 11                11. Motion to Strike [45] Response to [38] Response to 30 Motion, ECF No.  
12                47, is **DENIED as moot**.
- 13                12. Motion to Strike [42] Motion for Preliminary Injunction, [41] Motion for  
14                Temporary Restraining Order, ECF No. 51, is **DENIED as moot**.
- 15                13. Motion to Strike [51] Motion to Strike [42] Motion for Preliminary  
16                Injunction, [41] Motion for Temporary Restraining Order, ECF No. 58, is  
17                **DENIED as moot**.
- 18                14. Motion to Strike [51] Motion to Strike [42] Motion for Preliminary  
19                Injunction, [41] Motion for Temporary Restraining Order, ECF No. 61, is  
20                **DENIED as moot**.
- 21                15. Motion to Amend/Correct, ECF No. 85, is **DENIED in part and**  
22                **GRANTED in part**. Plaintiff shall have until July 15, 2015, to file an  
23                amended complaint. Defendants will then have 30 days to file responses.
- 24                16. Emergency Motion for Preliminary Injunction, ECF No. 89, is **DENIED**.
- 25                17. Motion for Temporary Restraining Order, ECF No. 90, is **DENIED**.
- 26                18. Motion for Temporary Restraining Order, ECF No. 96, is **DENIED**.
- 27                19. Motion for Preliminary Injunction, ECF No. 97, is construed as a motion  
28                to compel and is **GRANTED in part and DENIED in part**. Defendants

1 are ordered to provide Helfrich a soft-copy of the annotated Federal Rule  
2 of Civil Procedure 26 within thirty days. Defendants are further ordered  
3 to determine what happened to the Books, report their findings to Helfrich,  
4 and file with the Court a supplement explaining their findings, within  
5 thirty days.

6 20. Motion for Preliminary Injunction, ECF No. 105, is **DENIED**.

7 21. Motion for Temporary Restraining Order, ECF No. 106, is **DENIED**.

8 22. Motion for Leave to File Supplement, ECF No 121, is **DENIED as moot**.

9 23. Motion for Leave to File Supplement, ECF No.133, is **DENIED as moot**.

10 DATED: June 2, 2015.



11  
12 RICHARD F. BOULWARE, II  
United States District Judge